



L. JOYCE HAMPERS  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

July 15, 1981

("Company") is a Massachusetts corporation that manufactures and sells computer equipment. You inquire whether the Company's sales of such equipment are subject to the Massachusetts sales tax in the following circumstances.

The Company sells equipment to purchasers with offices outside Massachusetts. In some cases, the purchasers have offices in Massachusetts as well. The Company ships the equipment by common carrier, F.O.B. the Company's Massachusetts facility, either to the purchaser's Massachusetts office or to the Massachusetts office of a third party. There, the equipment is "enhanced" by the addition of software or supplemental hardware. Then the purchaser or the third party ships the "enhanced" equipment outside Massachusetts for use thereafter solely outside Massachusetts.

In some instances, the purchaser buys the equipment for resale outside Massachusetts. The purchaser may or may not be "engaged in business in Massachusetts" within the meaning of Massachusetts General Laws Chapter 64H, Section 1(5).

General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in Massachusetts by any vendor.

"Sale at retail" is defined in Chapter 64H, Section 1(13) as a sale of tangible personal property for any purpose other than resale in the regular course of business. "Sale" includes "[a]ny transfer of title or possession, or both,...of tangible personal property for a consideration, in any manner or by any

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means whatsoever" (G.L. c. 64H, s. 1(12)(a)).

Section 6(b) of Chapter 64H provides that the sales tax does not apply to

"[s]ales of tangible personal property in transit or stored at points of entry intended for export or import or which the vendor is obligated under the terms of any agreement to deliver to a purchaser outside the commonwealth or to an interstate carrier for delivery to a purchaser outside the commonwealth."

Section 7 of Chapter 64H provides that no person shall do business in Massachusetts as a vendor unless a registration shall have been issued to him for each place of business in accordance with Chapter 62C, Section 67, which requires each vendor to file an application for a registration certificate with the Massachusetts Commissioner of Revenue.

Under Chapter 64H, Section 8, the burden of proving that a sale of tangible personal property by any vendor is not a sale at retail is upon the vendor unless he obtains a resale certificate (State Tax Form ST-4) from the purchaser; the certificate relieves the vendor from the burden of proof only if taken in good faith from a vendor who holds a registration certificate issued under Section 7.

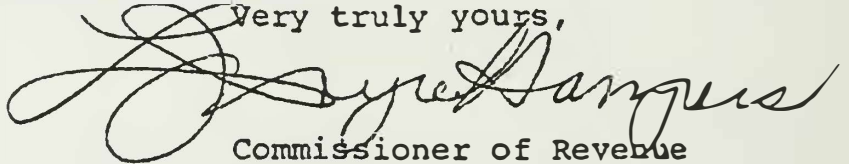
Based on the foregoing, it is ruled that:

- (1) The Company's retail sales of computer equipment shipped by the Company from its Massachusetts facility to another point in Massachusetts are subject to the sales tax.
- (2) The Company's sales of computer equipment for resale in the regular course of business by a purchaser who is himself engaged in business in Massachusetts as a vendor are not subject to the sales tax if the Company takes a Massachusetts resale certificate in good faith from the purchaser in connection with the sale.
- (3) The Company's sales of computer equipment for resale in the regular course of business by a purchaser who is not engaged in business in Massachusetts as a vendor will be presumed to be subject to tax. The Company may overcome this presumption by accepting in good

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faith from the purchaser a notarized statement on the purchaser's letterhead that he is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), and that he is purchasing the equipment solely for resale outside Massachusetts, and a copy of the purchaser's out-of-state registration or permit.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Raymond Langens", written in a cursive style. The signature is positioned above the printed title "Commissioner of Revenue".

Commissioner of Revenue

LJH:JXD:mf

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